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Supreme Court, U.S.
FILED
SEP 27 2006
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NO. 06-252

In The
SUPREME COURT OF THE
UNITED STATES

JOANNE N. YUHASZ, CSR, RPR.,

Petitioner,

v.

DEBORAH T. PORITZ, et als.,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit

(Circuit Nos. 05-1660, 05-1838, 05-2872)
Circuit Court Judges:
Roth, Ambro and Van Antwerpen

# REPLY PETITION FOR WRIT OF CERTIORARI

Joanne N. Yuhasz, CSR, RPR.
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Petitioner

## REPLY STATEMENT TO THE QUESTIONS PRESENTED

1. Certiorari should be granted on the jurisdictional question because although Petitioner presented the issue of whether Section 301 of the Labor Management Relations Act (LMRA) confers exclusive Federal Jurisdiction on the subject matter of the violation and interpretation of a Collective Bargaining Agreement to the Third Circuit and District Court, the courts below failed to address the jurisdictional question, mandating this Court to accept certiorari to resolve the jurisdictional issue.

2. Certiorari should be granted mandating appellate review and reversal of the dismissals of the complaints in this case based on the doctrines of *res judicata*, collateral estoppel, related defenses and the improper standard of review because all of Petitioner's claims/issues have been re-instated and Petitioner's rights under the First, Seventh and Fourteenth Amendments of the United States Constitution were violated when the District Court and Third Circuit committed reversible error by converting Rule 12(b)(6) motions to Rule 56 Summary Judgment motions without notice to Petitioner and denying Petitioner the opportunity to oppose the motions to dismiss.

3. Certiorari should be granted mandating appellate review and reversal of the Injunction, which resulted in an order to be enforceable by contempt penalties and resulting in sanctions, issued against Petitioner, a disabled civil rights "whistleblower," who was unrepresented by legal counsel.

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## REPLY LEGAL ARGUMENT WHY CERTIORARI SHOULD BE GRANTED

The material inaccurate statements advanced by the oppositions submitted to this Court necessitate this brief reply on behalf of Petitioner Joanne N. Yuhasz, CSR, RPR. ("Yuhasz').

### 1. Petitioner Yuhasz Advanced Legal Argument In the Third Circuit and District Court Below Pertaining to Section 301 of the Labor Management Relations Act (LMRA):

All parties to this case received Yuhasz's legal briefs filed with the United States District Court and Third Circuit which adamantly advanced the legal argument that Section 301 of the LMRA conferred exclusive subject matter jurisdiction in the Federal Court.

Subject matter jurisdiction is a non-waivable defense because it involves the very power of the court to hear a claim. Subject matter jurisdiction can never be waived. Neither the party's consent nor the failure to raise subject matter jurisdiction can confer subject matter jurisdiction on a court. *Golden v. Golden*, 382 F. 3d 348 (3d Cir. 2004); *Nesbit v. Gears Unlimited*, 347 F.3d 72 (3d Cir. 2003); *Duvall v. Elwood*, 336 F.3d 228 (3d Cir. 2003); *Borough of Closter v. Abram Demaree Homestead*, 365 N.J. Super. 338 (App. Div. 2004); *Bascom Corporation v. Chase Manhattan Bank*, 363 N.J. Super. 334 (App.Div. 2003); *In The Matter of Ahmad Mossavi*, 334 N.J. Super. 112 (Ch.Div. 2000); *Wiggington v. Servidio*, 324 N.J. Super. 114 (App.Div. 1999), *cert. denied* 163 N.J. 11 (1999).

In Federal Complaints 2750/1508, Yuhasz alleged

she was deprived of her rights under the First, Seventh and Fourteenth Amendments of the United States Constitution by her employer Poritz and State Court Judges - who were her co-employees - and this question gave the Federal Court original jurisdiction over her cases under Federal Question Jurisdiction, 28 U.S.C. §1331.

In Federal Complaints 2750/1508 - and in her pending State Court Complaint 1623/1778 - Yuhasz alleges violations of and retaliation under the New Jersey Law Against Discrimination (NJLAD) which mandates a trial by jury. N.J.S.A. 10:5-1 *et seq.* This "mandatory" trial by jury was violated by Summary Judgment Rule 56, especially since Yuhasz wasn't even afforded the opportunity to be heard in opposition.

Because the admitted allegations of the CBA violation and illegal union takeover claims in Federal Complaints 2570/1508 arose solely from the same underlying facts and claims which were fully re-instated in State Superior Court Complaint 1623/1778, Yuhasz attempted to resolve the jurisdictional question by including those claims in her timely-filed Federal RICO Complaints 2750/1508.

The admitted claims of the CBA violation and illegal union takeover were pending in PERC until Yuhasz withdrew them without prejudice in October 1999, and if they were addressed and resolved by PERC, Yuhasz would not have had a need to file State Court Complaint 3281 to attempt to resolve the "Affiliation Agreement" issues or Federal RICO Complaints 2750/1508.

Yuhasz was permitted by law to withdraw her PERC complaints without prejudice before an agency

determination was rendered and re-file them in State/Federal Court because the New Jersey Employer-Employee Relations Act does not apply to judicial employees such as Yuhasz. As Yuhasz's employer, the New Jersey Supreme Court is not bound by the Act. *Passaic County Probation Officers Ass'n v. County of Passaic,* 73 N.J. 247 (1977).

Yuhasz's meritorious Superior State Court Complaint 1623/1778 was specifically placed on the "Inactive List" pending resolution of the jurisdictional question which was not resolved by the District Court and Third Circuit mandating resolution by this Court. *Marshall v. Marshall,* 547 U.S. (2006).

**2. Certiorari Should Be Granted Mandating Appellate Review And Reversal Of The Dismissals Of Petitioner Yuhasz's Complaints 2750/1508:**

Yuhasz's Federal Complaints 2750/1508 cited factual allegations which have been admitted by all defendants and supported by official documentation by State Agency PERC confirming the illegal union takeover which has resulted in a monetary theft/extortion of Yuhasz and others similarly situated which is still ongoing.

Those admissions precluded summary judgment in favor of all defendants mandating review by this Court and reversal of the dismissals of Complaints 2750/1508.

The re-instatement of all of Yuhasz's claims render the application of the doctrines of *res judicata,* collateral estoppel and related defenses as a basis of dismissal moot mandating appellate review and reversal of the dismissals

of Complaints 2750/1508 and consolidation with State Superior Court Complaint 1623/1778 in the United States District Court.

The piecemeal fashion in which Yuhasz's issues were handled by the State Superior Court - which lacked subject matter jurisdiction - further mandates a review by this Court of the improper application of the doctrines of *res judicata,* collateral estoppel and related defenses because all of Yuhasz's claims have been re-instated and are pending discovery and adjudication.

This Court must reject the oppositions based on the Doctrine of Unclean Hands by their providing this Court with a materially inaccurate recitation of Yuhasz's litigation and "rulings."

It was the violation of the Collective Bargaining Agreement of Yuhasz and others similarly situated which triggered Yuhasz's initial complaint and Unfair Practice Charges to be filed in June and October of 1995. PERC issued complaints, including the main complaint on the issue of the CBA violation, and the PERC Commission issued an order granting a hearing to Yuhasz and others similarly on the issue of the illegal union takeover.

In or around January 2001, **six years later**, all parties admitted the CBA violation and illegal union takeover after Yuhasz was compelled to withdraw her PERC complaints without prejudice in October 1999.

So PERC never issued any rulings adjudicating the issues of the CBA violation and/or illegal union takeover. PERC further stated the "Affiliation Agreement" issue was not within their jurisdiction.

That's why Yuhasz was advised by legal counsel to file State Court Complaint 3281. Although defendants in Complaint 3281 admitted all of Yuhasz's allegations, State Superior Court Judge Winard did not have subject matter jurisdiction over these claims when he denied Yuhasz the opportunity to oppose summary judgment motions and he dismissed Complaint 3281 on the ground that PERC had already decided Yuhasz's claims alleged in Complaint 3281.

In reality, Complaint 3281 was filed solely because PERC never adjudicated any of Yuhasz's claims pertaining to the CBA violation/interpretation and the illegal union takeover, despite the twenty-three (23) Official Court Reporters who factually supported Yuhasz's claims.

Since the claims in Complaint 3281 were never adjudicated and arose from the underlying cause of action in Yuhasz's fully re-instated and pending State Superior Court Complaint 1623/1778, these claims are still active and can now be amended in Yuhasz's Complaint 1623/1778, but the State Court lacks exclusive subject matter jurisdiction over these claims because they involve the violation and interpretation of Yuhasz's CBA which is the reason why Yuhasz incorporated these claims in Federal Complaints 2750/1508.

**3. Certiorari Should Be Granted Mandating Appellate Review And Reversal Of The Injunction Issued Against Petitioner Yuhasz:**

The injunction issued against Yuhasz is not narrowly tailored, it is broadly tailored, and completely bars Yuhasz from being heard on her meritorious re-instated and admitted claims encompassed in State

Complaint 1663/1778 which exclusive subject matter jurisdiction must be in the Federal Court pursuant to Section 301 of the LMRA.

The injunction issued against Yuhasz violates her rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution. U.S. Const. Amend. XIV, §1; *Wolff v. McDonnell*, 418 U.S. 539, 578-79 (1974) (stating that the due process clause of the Fourteenth Amendment guarantees citizens access to courts to present claims of wrongdoings); *Boddie v. Connecticut*, 401 U.S. 371, 380-81 (1971)(finding a violation of due process to deny indigent access to court to file complaint for divorce.)

At this point, Yuhasz has been granted partial summary judgment on one of the elements Yuhasz needs to prove in State Superior Court Complaint 1623/1778. Should Yuhasz succeed further in proving her claims in State Court Complaint 1623/1778, all orders are null and void from their inception if the State Court lacks exclusive subject matter jurisdiction over these claims.

But Yuhasz cannot remove those claims to Federal Court because she is a plaintiff. Yuhasz further cannot save her claims by filing them in Federal Court and dismissing State Court Complaint1623/1778 because the injunction issued against Yuhasz specifically orders that she cannot file a complaint in Federal Court related to her employment matter and State Court Complaint 1623/1778 is her entire employment matter.

Because of this procedural dilemma that Yuhasz's former legal counsel have placed her in, Yuhasz's guaranteed rights under the First, Seventh and Four

Amendments of the United States Constitution will have been totally violated.

The oppositions, and the decisions they rely on, portray a materially inaccurate recitation of Yuhasz's litigation history. They further contain materially inaccurate recitations of the facts and prior legal rulings.

From 1995 to 2000, Yuhasz had only two (2) State Court Complaints 2514/1623/1778 (employment) and Complaint 1452/5833 (legal malpractice) filed on her behalf by legal counsel Selikoff/Damm and McKenna/Ambrosio. Yuhasz was also represented by legal counsel Courtney on her PERC complaints.

From 1995 to 2000, these two complaints were never affirmatively prosecuted through the discovery process on Yuhasz's behalf by her legal counsel.

More importantly, while these complaints were pending adjudication, Yuhasz's cause of action was still ongoing with additional claims arising under the continuing violation theory making the four-year statute of limitations for those additional claims and Yuhasz's RICO claims beginning in the year 2000.

The re-instatement of all of Yuhasz's claims in State Complaint 1623/1778 renders all subsequent dismissal orders which were predicated on the subsequently reversed dismissal of Complaint 1628/1778 null and void

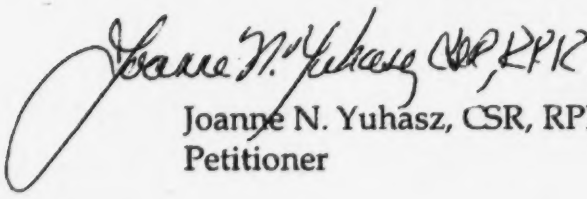
Thus, the claims asserted in Federal Complaints 2750\1508 are not barred under *res judicata*, collateral estoppel or related defenses, where the predicate for the application of those defenses was the subsequently

reversed dismissal of State Court Complaint 1623\1778.

## REPLY CONCLUSION

Based on the foregoing, Petitioner respectfully submits that the Petition for a Writ of Certiorari must be granted as a matter of law to resolve the jurisdictional question and should be granted to review the decisions of the United States District Court, District of New Jersey and United States Court of Appeals for the Third Circuit and to vacate the injunction issued against Petitioner.

Respectfully Submitted,



Joanne N. Yuhasz, CSR, RPR.
Petitioner

Dated: September 28, 2006